

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
) Bankruptcy Case No. 01-10539-PJW
EXDS, INC. (f/k/a EXODUS)
COMMUNICATIONS, INC.), et. al.)
)
Debtor.)
_____)
)
EXDS, INC. (f/k/a EXODUS)
COMMUNICATIONS, INC.), et. al.) Adversary Proceeding No. 03-50426-PJW
)
Plaintiff,)
) Civil Action No. 03-532-KAJ
v.)
)
RK ELECTRIC, INC.)
)
Defendant.)

MEMORANDUM ORDER

Before the court is RK Electric's (the "Defendant") motion for withdrawal of the reference (Docket Item ["D.I."] 1; the "Motion") of adversary proceeding number 03-50426 and the Defendant's request for oral argument (D.I. 7). For the reasons that follow, the court denies the Motion and denies the request for oral argument.

On September 26, 2001, EXDS (the "Plaintiff") filed for Chapter 11 bankruptcy. (D.I. 6 at 2.) The Plaintiff then scheduled an unsecured non-priority claim in favor of the Defendant in the amount of \$131,191.00. (*Id.*) The Defendant, thereafter, filed a proof of claim against the Plaintiff in the amount of \$189,199.50. (D.I. 1 at 1; D.I. 6 at 2.) On June 5, 2002, the Bankruptcy Court confirmed the Plaintiff's plan of reorganization. (D.I. 6 at 2.)

On January 23, 2003, the Plaintiff commenced adversary proceeding number 03-

50426, seeking to avoid and recover \$615,879.01 from the Defendant. (*Id.*) The Defendant, in its Answer, demanded a jury trial. (D.I. 1 at 3.) On May 29, 2003, the Defendant filed this Motion asserting that the adversary proceeding should be withdrawn because the Defendant had a right to a jury trial. (*Id.*) The Defendant also filed, with the Bankruptcy Court, a motion to withdraw its proof of claim and a motion to determine whether the adversary proceeding is a core or non-core proceeding. (D.I. 1 at 2; D.I. 6 at 2.) On June 20, 2003, the Bankruptcy Court determined that the proceeding constituted a core proceeding under 28 U.S.C. § 157(b)(2). Plaintiff then filed with the Bankruptcy Court a motion to strike the Defendant's jury demand. On October 31, 2003, in deciding the merits of Plaintiff's motion to strike the jury demand and Defendant's motion to withdraw its proof of claim, the Bankruptcy Court held that by filing its proof of claim, Defendant had subjected itself to the exclusive jurisdiction of the Bankruptcy Court and lost its right to a jury trial. *EXDS, Inc. V. RK Electric, Inc. (In re EXDS, Inc.)*, 301 B.R. 436, 443 (Bankr. D. Del. 2003).

A party that files a proof of claim against a bankruptcy estate subjects itself to the Bankruptcy Court's equitable jurisdiction, and is not entitled to a jury trial on matters affecting the allowance of those claims. *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990); *Billing v. Ravin, Greenberg & Zackin, P.A.*, 22 F.3d 1242, 1249 (3d Cir. 1994); *NDEP Corp. V. Handl-It, Inc. (In re NDEP Corp.)*, 203 B.R. 905, 911 (D.Del. 1996); see *Travellers Int'l v. Robinson*, 982 F.2d 96, 98 (3d Cir. 1992) (“[B]y submitting a proof of claim to the debtor's estate, [defendant] effectively waived its right to a jury trial and submitted itself to the equitable jurisdiction of the bankruptcy court.”). Here, the Defendant filed a proof of claim on April 5, 2002. (D.I. 6 at 4.) Therefore, by submitting

a proof of claim, and because the Defendant was unable to withdrawal its proof of claim¹, the Defendant has subjected itself to the Bankruptcy Court's jurisdiction, and is not entitled to a jury trial. Under the circumstances, the Motion is not well-founded.

Accordingly, IT IS HEREBY ORDERED that Defendants' Motion (D.I. 1) and request for oral argument (D.I. 7) are DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

March 5, 2004
Wilmington, Delaware

¹ EXDS, 301 B.R. at 443